

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARY HOFMANN,

Plaintiff,

v.

FIFTH GENERATION, INC., a Texas
corporation; and DOES 1 through 100,
inclusive,

Defendant.

Case No.: 14cv2569 JM(JLB)

Related Case No: 14cv2990 JM(JLB)

**ORDER DENYING PLAINTIFF
GARY HOFMANN'S MOTION TO
CONSOLIDATE RELATED CASES
PURSUANT TO FED. R. CIV. P. 42(a)**

On April 22, 2015, Plaintiff Gary Hofmann ("Hofmann") filed a motion to consolidate related cases, Hofmann v. Fifth Generation, Inc. and Does 1-100, No. 14cv2569 (S.D. Cal.) ("the Hofmann action") and Marc Cabrera v. Fifth Generation, Inc., No. 14cv2990 (S.D. Cal.) ("the Cabrera action"), and further moved the court for an order appointing interim lead class counsel and scheduling the filing of Plaintiffs' consolidated complaint. (Doc. No. 21). On May 18, 2015, Plaintiff Marc Cabrera filed an opposition to Hofmann's motion to appoint interim class counsel and a countermotion to appoint interim co-lead counsel. (Doc. No. 28). On the same day, Defendant Fifth Generation, Inc. filed a response to Hofmann's motions, taking no position on whether consolidation should be granted or as to the other relief sought, but addressing the alleged

1 inaccuracies in Hofmann's motion. (Doc. No. 26).

2 The Hofmann action was filed on September 15, 2014, in Superior Court in San
3 Diego County. It was then removed by Defendant to this court on October 28, 2014.
4 (Doc. No. 1). On December 18, 2014, Defendant filed a motion to dismiss the class
5 action complaint, or, in the alternative, for a more definite statement. (Doc. No. 8). On
6 March 18, 2015, this Court denied that motion in part and granted it in part, and granted
7 Plaintiff leave to amend. (Doc. No. 15). On April 10, 2015, after Plaintiff amended the
8 operative complaint, Defendant answered. (Doc. No. 18).

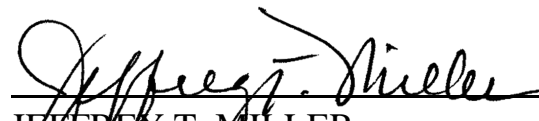
9 The Cabrera action was filed on December 22, 2014. (Doc. No. 1). On March 25,
10 2015, the Cabrera action was deemed related to the Hofmann action, and was transferred
11 to this court pursuant to the low number rule of Local Rule 40.1. (Doc. No. 18). On
12 April 1, 2015, Defendant filed an answer in the Cabrera action. (Doc. No. 20).

13 On August 28, 2015, Defendant filed motions for summary judgment in both
14 actions. On October 5, 2015, both Hofmann and Cabrera filed oppositions to
15 Defendant's motions. On October 9, 2015, Defendant filed replies in support of its
16 motions in both cases.

17 At this juncture of the case, the court denies Plaintiff's motion to consolidate the
18 Hofmann and Cabrera actions without prejudice. The two actions have been deemed
19 related pursuant to the low number rule of Local Rule 40.1 (Doc. No. 18), and
20 coordination has been ongoing. Additionally, given that this case is in its early stages of
21 litigation, there is currently no agreement with respect to the appointment of interim class
22 counsel, and in light of the court's denial of Plaintiff's motion to consolidate, the court
23 defers ruling on Plaintiff's motion to appoint interim class counsel until a later and more
24 appropriate point in this litigation.

25 IT IS SO ORDERED.

26 DATED: October 28, 2015

27 
28 JEFFREY T. MILLER
United States District Judge